

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Criminal Justice Committee

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BILL: PCS/SB 2280

INTRODUCER: Criminal Justice Committee and Senator Argenziano

SUBJECT: High Risk Offenders

DATE: March 20, 2006

REVISED: 03/21/06

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cannon	Cannon	CJ	<b>Pre-meeting</b>
2.			ED	
3.			GO	
4.			EA	
5.				
6.				

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## I. Summary:

The bill makes the following changes to the Jessica Lunsford Act provision requiring fingerprint-based background checks for contractors who go on school grounds when students are present:

- continues to subject *certain* school contractors to Level 2 background screenings;
- provides a list of offenses that disqualifies a contractor from having access to school grounds when students are present;
- exempts from Level 2 background checks those contractors who are under the direct supervision of persons who meet screening requirement;
- subjects exempt contractors to a search of the state and national registry of sexual predators and sexual offenders;
- provides immunity from civil and criminal liability for those persons who share Level 2 background check information in good faith;
- clarifies that contractors who contract directly with schools (such as athletic officials) are likewise required to undergo Level 2 background checks;
- specifies that Level 2 background checks need to be performed every 3 years;
- allows fingerprints to be taken by law enforcement, district, public school, or private entity;

- requires the reporting to an employer or contractor within 48 hours if a contractor is charged with any disqualifying offense;
- provides that willful failure to report charges for any disqualifying offense to employer or contractor is a 1st degree misdemeanor;
- caps fees of Level 2 background checks at no more than 30% of total state and FBI costs;
- requires cost to be borne by school board, contractor, school, or individual;
- requires suspension of contractors pending appeal of decision to deny access;
- allows for contesting denial of access based on mistaken identity;
- exempts law enforcement and personnel required to have Level 2 background checks for licensure, employment, or other purposes;
- requires a person to report that he or she submitted to Level 2 background checks in another district and requires school district to use shared system to verify the information at no charge;
- requires districts to accept Level 2 background checks results from other districts; and
- requires FDLE to implement a system for school districts to share the results of Level 2 background checks and provides FDLE with rulemaking authority.

In addition, the bill requires all driver's licenses or identification cards issued to sexual predators or sexual offenders have on the front of the card the marking "775.21, F.S." for a person designated as a sexual predator and "943.0435, F.S." for a person designated as a sexual offender.

The bill provides that it is unlawful for any person to have in his or her possession a driver's license or identification card upon which the sexual predator or sexual offender markings are not displayed or have been altered. A violation of this provision will be a third degree felony.

This bill amends sections 322.141, 322.212, 775.21, 943.0435, and 1012.465, and creates sections 1012.467 and 1012.468 of the Florida Statutes.

## **II. Present Situation:**

### **Legislative History on School Background Checks**

For the past three consecutive years the Legislature has increasingly required individuals who come in contact with students to submit to Level 2 background checks conducted by FDLE and the FBI.

In 2003, s. 1012.32, F.S., was amended to require all instructional and noninstructional personnel hired to fill positions having direct contact with students to submit fingerprints for criminal background checks conducted by the FDLE and the FBI. The Department of Education interpreted the term “personnel” to include contractors. Accordingly, contractors having direct contact with students would have to meet Level 2 background checks (state and federal).

In 2004, the Legislature codified the Department of Education’s interpretation by specifically requiring school district contractors with direct student contact to undergo Level 2 criminal records checks (state and federal). (s. 1012.465, F.S., (2004)).

Section 1012.32, F.S., provides persons “found through fingerprint processing to have been convicted of a crime involving moral turpitude shall not be employed, engaged to provide services, or serve in any position regarding direct contact with students.”

### **Section 21 of the Jessica Lunsford Act –Fingerprinting Contractors on School Grounds When Students are Present**

In 2005, the Legislature enacted section 21 of the Jessica Lunsford Act (Chapter 2005-028, Laws of Florida). The legislation was passed following the assault and murder of 9-year-old Jessica Lunsford in Homosassa Springs, Florida. The crime was allegedly committed by a sexual offender who had worked as a subcontracted brick mason at Jessica Lunsford’s elementary school. While the act focused primarily on measures to track, detain, and monitor sexual offenders and predators, section 21 specifically related to individuals with access to school grounds when students are present.

Section 1012.465, F.S., was amended by the act to expand the law to require Level 2 background checks not only for contractors with direct student contact (as required by the 2004 law), but also for those who are on school grounds when students are present.

The practical impact of the legislation was to require school districts to conduct a fingerprint-based Level 2 background screening of contractors – such as a construction worker or soda machine vendor – who visit schools during classes and determine whether the individual has been convicted of a crime of moral turpitude. The costs associated with the background screenings has been borne by the district, the contractor, or the individual. Parents or guardians who visit school to pick up their children were not addressed by the Lunsford Act – instead school districts adopt their own policies for screening visitors. Volunteers were also not addressed in the Jessica Lunsford Act, although Chapter 2004-81, Laws of Florida, required government entities who use volunteers at places where children regularly congregate to conduct a search against the sex offender registry maintained by FDLE.<sup>1</sup>

### **Section 21 of the Jessica Lunsford Act -- Implementation Issues**

After the passage of the Jessica Lunsford Act, the district school boards, the Department of Education, and the Florida Department of Law Enforcement experienced implementation problems associated with the unexpected volume of contractors who needed Level 2 background checks. Numerous complaints arose from school officials, vendors, contractors, subcontractors, charter bus drivers, athletics officials, photographers, visiting performers, class ring sales

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<sup>1</sup> Section 943.04351, F.S.

personnel, engineers, architects, utility workers, food and health service personnel, and other impacted contractors. Many of the complaints were as follows:

- School districts expressed concerns about the volume of fingerprinting/background screenings that were required under the new law.<sup>2</sup>
- School districts expressed liability concerns about sharing criminal history information and about failing to identify every possible required fingerprintee.
- Contractors who work in multiple school districts opposed the costs for redundant Level 2 background checks.
- Contractors opposed the additional processing fees imposed by the school districts as well as the wide variability in the Level 2 background check fees charged by the different school districts.<sup>3</sup>
- Contractors and school officials questioned whether Level 2 background checks were necessary for those contractors (for example, the express mail delivery person or person who refilled the soda machine) who go on school grounds for short or incidental visits or who are directly supervised for the duration of their visit.
- Contractors who are already required to undergo a Level 2 background screening for the purpose of their employment, certification, or licensure expressed frustration over being required to undergo redundant Level 2 background checks.

Contractors expressed frustration over the different screening standards and moral turpitude standard.<sup>4</sup> Because there is no statutory definition of moral turpitude, each school district determines whether or not a contractor with a criminal history should be allowed on school grounds. Contractors claim that this school district discretion results in inconsistency in banning a contractor from school grounds – a claim that may be particularly burdensome for contractors who work in multiple districts. Some complaints also arose about contractors being inappropriately banned from school grounds for minor crimes or for crimes committed decades ago.

Shortly after the effective date of the act, the Florida Department of Education (DOE) issued in August of 2005 a technical assistance paper to help the school districts in implementing the provisions of the act. In the paper districts were encouraged to share Level 2 background check

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<sup>2</sup> FDLE experienced a 196% increase for the month of September, and a 178% increase for the month of October for fingerprint submissions from school districts compared to 2004.

<sup>3</sup> According to a survey of school districts conducted by the Joint Committee on Intergovernmental Relations in December of 2005, 16 school districts charged contractors \$67 or higher for the background screenings – representing a “profit margin” or processing fee in excess of 30%. The fees ranged widely with 4 districts charging over \$90. School districts reported that these fees were used to cover district administrative costs and contractor identification badges.

<sup>4</sup> According to a survey of school districts conducted by the Joint Committee on Intergovernmental Relations in December of 2005, 31 districts reported the use of Level 2 screening standards (19 using only Level 2 screening standards and 12 using a combination of Level 2 standards, a moral turpitude standard and possibly another standard), 7 districts reported using only a moral turpitude standard, and 5 districts reported the use of a standards other than moral turpitude or Level 2 standards.

results with other public school districts to reduce the time and fiscal impact on certain contractors who may be providing services in multiple districts.

Also in August of 2005, the President of the Senate and Speaker of the House of Representatives formally requested Commissioner Tunnell with FDLE to implement an Internet-based system to allow for Level 2 background check results provided to the school districts to be shared with other school districts. FDLE developed the Florida Shared School Results (FSSR) system which became available to school districts on September 30, 2005. After a school district requests a Level 2 background check from FDLE, the department posts the results on a secure website that is accessible to the school districts. Other school districts can then access the results and view the same criminal history record that was received by the original school district. The information is searchable by name, social security number, or submitting agency. This new system was designed to lessen the redundancy of background screenings for contractors who do business with multiple school districts.

### **Sexual Predator Registration**

As of November 17, 2005, there were 5,492 sexual predators in the state registry. Section 775.21, F.S., provides that a person convicted of an enumerated sexual offense must be designated a "sexual predator." Specifically, a person must be designated a sexual predator if he or she has been convicted of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of one of the following offenses:
  - a. kidnapping or false imprisonment where the victim is a minor and the defendant is not the victim's parent;
  - b. sexual battery;
  - c. lewd or lascivious offenses;
  - d. selling or buying a minor for child pornography; or
  - e. a violation of a similar law of another jurisdiction.
2. Any felony violation of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication one of the following offenses:
  - a. kidnapping, false imprisonment, or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent;
  - b. sexual battery;
  - c. procuring a person under the age of 18 for prostitution;
  - d. lewd or lascivious offenses;
  - e. lewd or lascivious battery on an elderly person;
  - f. promoting sexual performance by a child;
  - g. selling or buying a minor for child pornography; or
  - h. a violation of a similar law of another jurisdiction.

If the sexual predator is not in the custody or control of, or under the supervision of, the DOC, or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially register in person at a Florida Department of Law Enforcement (FDLE) office, or at the sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under DOC supervision, must register at a driver's license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements. This information is provided to FDLE which maintains the statewide registry of all sexual predators and sexual offenders (discussed further below). The department maintains a searchable web-site containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

Registration procedures are also provided for sexual predators who are under federal supervision, in the custody of a local jail, designated as a sexual predator (or another sexual offender designation) in another state and establish or maintain a residence in this state, or are enrolled, employed, or carrying on a vocation at an institution of higher education in this state.

Procedures are provided for notifying communities about certain information relating to sexual predators, much of which is compiled during the registration process. A sexual predator must report in person every six months to the sheriff's office in the county in which he or she resides to reregister.

A sexual predator's failure to comply with registration requirements is a third degree felony. A sexual predator who has been convicted of one of a list of enumerated offenses when the victim of the offense was a minor is prohibited from working or volunteering at any business, school, day care center, park, playground, or other place where children regularly congregate. A violation of this provision is a third degree felony.

### **Sexual Offender Registration**

As of November 17, 2005, there were 30,583 sexual offenders in the state registry. The distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred. Specifically, a sexual offender is a person who has been convicted of one of the following offenses and has been released on or after October 1, 1997:

- a. kidnapping, false imprisonment, or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent;
- b. sexual battery;
- c. procuring a person under the age of 18 for prostitution;
- d. lewd or lascivious offenses;
- e. lewd or lascivious battery on an elderly person;
- f. promoting sexual performance by a child;
- g. selling or buying a minor for child pornography;
- h. selling or showing obscenity to a minor;
- i. using a computer to solicit sexual conduct of or with a minor;
- j. transmitting child pornography;

- k. transmitting material harmful to minors;
- l. violating a similar law of another jurisdiction.

A sexual offender is required to report and register in a manner similar to a sexual predator. Failure of a sexual offender to comply with the registration requirements is a third degree felony.

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 322.141, F.S., effective August 1, 2006, to provide that all driver's licenses or identification cards issued or reissued to sexual predators or sexual offenders must have on the front of the card the following:

- For a person designated as a sexual predator under s. 775.21, F.S., the marking "775.21, F.S."
- For a person subject to registration as a sexual offender under s. 943.0435, F.S., the marking "943.0435, F.S."

**Section 2** of the bill amends s. 322.212, F.S., effective August 15, 2006, to provide that it is unlawful for any person to have in his or her possession a driver's license or identification card upon which the sexual predator or sexual offender markings required by s. 322.141, F.S., are not displayed or have been altered. A violation of this provision will be a third degree felony.

**Sections 3, 4, and 5** of the bill amend the sexual predator and sexual offender statutes to specify that the driver's license or identification card a predator or offender is required to secure must comply with s. 322.141(3), F.S.

**Section 6** of the bill amends s. 1012.465, F.S., to expand the definition of contractual personnel to include contracts with a school. Current law specifies that contractual personnel includes a vendor, individual, or entity under contract with a *school district*. This change in law, if enacted, will have the practical effect of clarifying that contractors who contract directly with schools (such as athletic officials) are required to undergo background screening.

**Section 7** of the bill creates a new section of law in the education code governing the permitted access to school grounds by noninstructional contractors. Subsection (1) of the newly created statute defines the terms "noninstructional contractor," "convicted," and "school grounds." The bill modifies the definition of contractor to include any vendor, individual, or entity under contract with a school or school board who receives remuneration for services performed for the school or district, but who is otherwise not considered an employee of the school district. It also includes any employee of a contractor who performs services for the school district or school under the contract and any subcontractors.

Subsection (2)(a) provides the process for the fingerprint-based background screening of contractors, enumerates the responsibilities of the school district and the contractor being screened, and prohibits individuals convicted of certain crimes from having access to school grounds. The school districts are required to screen the results of the criminal history check using the disqualifying offenses and promptly provide the results to the shared system through a secure Internet website.

The bill specifies that the cost of the criminal history check may be borne by the district school boards, the school, the contractor, or the individual. The bill also caps the fees of the background screenings to no more than 30 percent of total state and FBI costs.

Subsection (2)(a) of the bill specifies that state and federal criminal history checks need to be performed every 3 years and that fingerprints may be taken by *either* an authorized law enforcement agency or an employee of a school district, or a private entity who is trained to take fingerprints.

Subsection (2)(b) requires the school districts to use the shared system and to not charge an individual an additional fee for verifying the results of his or her criminal history check.

Subsection (2)(c) provides the following list of offenses that disqualifies a contractor from having access to school grounds when students are present:

- any offense in s. 943.0435(1), F.S., relating to the registration of individuals as sexual offenders;<sup>5</sup>
- sexual misconduct with certain developmentally disabled clients;
- sexual misconduct with certain mental health patients;
- terrorism;
- murder;
- kidnapping;
- lewdness and indecent exposure;
- incest; and
- abuse, aggravated abuse, and neglect of a child.

Subsections (3) and (4) requires that contractors who have been convicted of a disqualifying offense be immediately suspended from having access to school grounds unless the contractor has had a full pardon or has had his or her civil rights restored.

Subsection (5) requires the school district to notify a contractor when access to school grounds has been denied. The section of the bill also specifies that the only basis for contesting the denial of access is proof of mistaken identity.

Subsection (6) requires the contractor to report to his or her employer within 48 hours if charged with any disqualifying offense. A contractor who willfully fails to report charges for any disqualifying offense to an employer or to a contractor commits a 1st degree misdemeanor.

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<sup>5</sup> Kidnapping where victim is minor and the defendant is not the victim's parent, false imprisonment, luring and enticing a child, sexual battery, procuring a person under age 18 for prostitution, lewd or lascivious offenses, lewd or lascivious battery on an elderly person, promoting sexual performance by a child, selling or showing obscenity to a minor, using a computer to solicit sexual conduct of or with a minor, transmitting child pornography, transmitting material harmful to minors, selling or buying minors.



Subsection (7) requires FDLE to implement a system for school districts to share the results of criminal history checks. The bill also provides FDLE with rulemaking authority and provides immunity from civil and criminal liability for those persons who share information in good faith.

**Section 8** of the bill creates a new statute in the education code which exempts certain individuals from the fingerprint-based criminal history checks.

Subsection (1) of the newly created statute defines the term “noninstructional contractor.”

Subsection (2) requires school districts to exempt the following contractors from the fingerprint-based background screening requirements:

- contractors who are under the direct supervision (physical presence and within line of sight) of persons who meet screening requirement;
- contractors who are required to undergo a Level 2 background screening process for licensure, employment, certification, or other purposes; and
- law enforcement officers who are assigned to or dispatched to school grounds by his or her employer.

Subsection (3) requires contractors who are exempt from fingerprint-based criminal history background checks to be subject to a search of the state and national registry of sexual predators and sexual offenders. A contractor who is identified as being a registered sexual predator or sexual offender shall not be permitted on school grounds when students are present.

Subsection (4) requires districts to accept background screening results from other districts and not subject any contractor to additional criminal history background screenings.

**Section 9** of the bill provides a contingent effective date of July 1, 2006.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Although not quantifiable, contractors will financially benefit because of the following provisions in the bill:

- exempts contractors who are directly supervised from undergoing the more expensive Level 2 background screening;
- requires the capping of fees;
- prohibits redundant screenings by requiring school districts to share results; and
- allows contractors to choose which entity they use to submit fingerprints.

**C. Government Sector Impact:****Exemptions from Fingerprint Requirements:**

Although not quantifiable, the provision in the bill that exempts contractors who are not directly supervised from undergoing the more expensive Level 2 background screening may provide a less burdensome volume of cases for school districts who are required to process the criminal history background checks.

Likewise, the provision in the bill that exempts contractors who are not directly supervised from undergoing the more expensive Level 2 background screening may also reduce the revenue received by the FDLE in processing the criminal history background checks.

**Cap on Fees**

The bill limits the amount of fees that a school district is permitted to charge for a federal and state criminal history check of a contractor if required by a district superintendent. Currently, the combined fee for the FDLE and FBI check is \$47 - \$23 to the FDLE and \$24 to the FBI. The bill provides that any fee for a check of state and federal criminal history that is required by a superintendent under the newly created s. 1012.4561, F.S., may not exceed the sum of fees charged by FDLE, the FBI, and DOC, plus an additional administrative fee specified by the school board which may not exceed 30 percent of the sum of the other specified fees. This provision could reduce the revenue generated by school districts from the additional fees above the 30 percent margin.

**Driver's License Designation:**

The Department of Highway Safety and Motor Vehicles estimated that the provisions of the bill will cost \$ 211,312.00 during the first year. Their projection is based upon the following calculations and presented for two different postage options:

Registered Sexual Predators 3,708  
Registered Sexual Offenders 27,023  
Total 30,731

<b>Option 1</b>	Card Cost \$1.56	\$47,940.00
	W/Standard Postage (1st Class)	\$ 9,465.00
	Programming	\$30,000.00
	Total	\$87,405.00
<b>Option 2</b>	Card Cost \$1.56	\$47,940.00
	W/Standard Postage (Certified/Return Receipt)	\$133,372.00
	Programming	\$30,000.00
	Total	\$211,312.00

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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